

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

JULIE DALESSIO, an individual,

Plaintiff,

v.

UNIVERSITY OF WASHINGTON, ET.  
AL.

Defendant.

No. 2:17-cv-00642-MJP

DECLARATION OF JOSEPH THOMAS  
CONTESTING ALLEGATIONS MADE IN  
JAYNE FREEMAN'S DECLARATION AND  
IN DEFENDANTS' REQUEST FOR A  
PROTECTIVE ORDER

**Note on Motion Calendar October 26, 2018**

I, Joseph Thomas, declare as follows:

1. I am the court-appointed pro bono counsel for Plaintiff Julie Dalessio in this above entitled lawsuit. I make this declaration based upon my own personal knowledge, upon facts which are admissible in evidence. I am competent to testify to the matters set forth in this declaration.

**Notice of Unavailability**

2. I filed a Notice of Unavailability with this Court on September 17, 2018. *See* Dkt. 105.

- 1           3. On September 17, 2018, defense counsels Jayne Freeman, Derek Chen and myself had  
2           a telephonic discovery conference.
- 3           4. In that telephonic discovery conference, Ms. Freeman stated that she suggested  
4           Defendants would file a motion for summary judgment in the near future. I became  
5           concerned because I would be out of the country for a couple of weeks, as identified in  
6           the Joint Status Report. Dkt. 69 at 12. I did not know about the logistics of such  
7           things as an internet connection to the place where I was going on top of the familial  
8           obligations. Thus, I was uncomfortable, to say the least, about Defendants suggesting  
9           that they would file a motion for summary judgment in my absence. I told Ms.  
10          Freeman that I had long-established plans that I would be out of the country for this  
11          trip. During the conversation, I even referenced to Ms. Freeman the Joint Status  
12          Report in Document 69 as evidence about my candor to Defendants and the Court  
13          about this trip for at least six months.
- 14          5. Ms. Freeman told me, point blank, that unavailability in the Joint Status Report was  
15          only for the Court's trial planning purposes and it posed no obligation upon  
16          Defendants when to file or not to file a motion for summary judgment. Ms. Freeman  
17          advised me to file a Notice of Unavailability with the Court so that a motion for  
18          summary judgment would not be filed while in my absence. In fact, in the Notice of  
19          Unavailability it states that Ms. Freeman and Mr. Chen told me to file a Notice of  
20          Unavailability because the Joint Status Report was inadequate. Dkt. 105.
- 21          6. My intention with filing the Notice of Unavailability was to formally file a document  
22          in court, like Ms. Freeman advised, and to confirm my unavailability for planning  
23          such things as a motion for summary judgment.
- 24          7. I never intended the Notice of Unavailability to encompass all matters regarding this  
25          case. I told Ms. Freeman during the telephonic conference on September 17, 2018 that  
26          I would try to check my email, but I was unsure if I would have internet access or not.  
27          Ms. Freeman knew that she could contact me about matters that did not require my  
28          immediate attention and I would try my best to reply during my unavailability, and if

1 not, I would reply when I returned.

2 8. Defendants understood my unavailability was not meant to be all-encompassing  
3 because Defendants made a new request to this Court for a protective order from  
4 discovery during my absence. *See* Dkts. 111 and 112.

5 **Ms. Freeman's Exhibit J – Dkt. 113-10**

6 9. Defendants argue in Document 111 filed with Court that I served additional discovery  
7 requests based upon my unavailability. This argument in Document 111 relies solely  
8 upon Ms. Freeman's Declaration in Document 113 filed with this Court.

9 10. Ms. Freeman testifies under penalty of perjury in Document 113 the documents in  
10 Exhibit J [Dkt. 113-10] are a true and correct copy of a conversation between Ms.  
11 Freeman and myself where I served a second set of discovery requests "after  
12 specifically requesting Defendants not file a motion for summary judgment" that Ms.  
13 Freeman alleges she told me that Defendants "intended to file."

14 11. The words summary judgement appears only twice in Exhibit J [Dkt. 113-10] once on  
15 page six (6) and once again on page eight (8).

16 12. On page six (6) of Exhibit J to Ms. Freeman's Declaration [Dkt. 113-10 at 6] summary  
17 judgment is mentioned once by me. The first time I mention summary judgment is in  
18 the paragraph talking about request for production number 7 (Plaintiff's first set of  
19 discovery requests). Here I tell Ms. Freeman that anticipated documents contained in  
20 request for production number 7 would be needed for Plaintiff to defend against a  
21 motion for summary judgment.

22 13. On page eight (8) of Exhibit J to Ms. Freeman's Declaration [Dkt. 113-10 at 6]  
23 summary judgment is mentioned once by me. The first time I mention summary  
24 judgment is in the paragraph talking about request for production number 7 (Plaintiff's  
25 first set of discovery requests). Here I tell Ms. Freeman that anticipated documents  
26 contained in request for production number 7 would be needed for Plaintiff to defend  
27 against a motion for summary judgment.

28 14. At no point in Exhibit J to Ms. Freeman's Declaration [Dkt. 113-10] did I request

1 defendants not to file a motion for summary judgment.

2  
3 DATED this 22<sup>nd</sup> day of October 2018, at Renton, Washington.

4  
5  
6 /s/ Joseph Thomas  
Joseph Thomas  
7 Attorney for Plaintiff WSBA # 49532

8 **Certificate of Service**

9 I hereby certify that on 22 of October 2018, I filed the foregoing with the Clerk of the  
10 Court through the CM/ECF system which will automatically send electronic mail notification of  
11 such filing to the CM/ECF registered participants as identified on the Electronic Email Notice  
12 List.

13 /s/ Joseph Thomas  
14 Joseph Thomas, WSBA 49532  
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Renton, WA 98058  
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